

**CLAIMS**

**Agreement Between the  
UNITED STATES OF AMERICA  
and AUSTRIA**

Relating to the Agreement of October 24, 2000

Effected by Exchange of Notes  
Dated at Vienna January 23, 2001

with

Attachment



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

## **AUSTRIA**

### **Claims**

*Relating to the agreement of October 24, 2000.  
Effected by exchange of notes  
Dated at Vienna January 23, 2001;  
Entered into force June 6, 2001.  
With attachment.*

No 2140.02/0044e-BdSB/2001

## **Note Verbale**

The Federal Ministry for Foreign Affairs of the Republic of Austria presents its compliments to the Embassy of the United States of America and has the honor to refer to the Preamble and to Articles 1(4), 2(2), 2(3) and 3(3) of the Agreement between the Austrian Federal Government and the Government of the United States of America concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund)("Agreement"), signed October 24, 2000.

Noting the correspondence between the President of the United States and the Federal President of the Republic of Austria, in connection with the Agreement,

Recalling the relevant provisions of the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria, the 1959 Exchange of Notes Constituting an Agreement between the United States of America and Austria relating to the Settlement of Certain Claims under Article 26 of the Austrian State Treaty of May 15, 1955, as well as the contents of the letter dated December 19, 1961 from Dr. Nahum Goldman, the Chairman of the Committee for Jewish Claims on Austria, to Dr. Josef Klaus, the Austrian Federal Minister of Finance.

To the  
Embassy of the United States of America  
Vienna

The Austrian Federal Government shall provide immediate compensation for survivors pursuant to Annex A, paragraph 1, propose legislation to the Austrian Parliament by April 30, 2001 to establish a General Settlement Fund ("GSF") (providing for a Claims Committee and an Arbitration Panel) in conformity with the principles set forth in Annex A, paragraphs 2 and 3, and seek changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4.

The Austrian Federal Government shall make good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9.

The Austrian Federal Government welcomes the commitment of the United States to consider the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, the General Settlement Fund, established in conformity with the principles set forth in Annex A, paragraphs 2 and 3, the changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4, and the making of good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9, to constitute a "suitable potential remedy", as understood by Articles 2(2) and 3(3) of the Agreement, for all claims that have been or may be asserted against Austria and/or Austrian companies, as defined in Annex B, arising out of or related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art and, subject to the provisions of Annex A, paragraph 10, claims for *in rem* restitution of property owned by Austrian provinces and municipalities.

The Austrian Federal Government welcomes the commitment of the United States, upon fulfillment of the commitments of the Austrian Federal Government referred to above, to support all-embracing and enduring legal peace for the above-mentioned claims, as provided for in the Agreement and herein.

The Austrian Federal Government agrees that this exchange of notes and the establishment of the GSF shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era or World War II.

This Note and the United State's affirmative note in reply shall constitute an agreement between Austria and the United States which shall enter into force when Austria notifies the United States, by diplomatic note, that it has implemented its commitments referred to above.

Austria agrees that Annexes A and B shall be integral parts of this agreement.

The Federal Ministry for Foreign Affairs of the Republic of Austria takes this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Attachment: As stated

Vienna, 23 January 2001



## Annex A

The Exchange of Notes between the Government of the United States and the Austrian Federal Government provides that the principles governing the operation of the General Settlement Fund will be set forth in Annex A. The Exchange of Notes also provides that Austria will make good faith progress on the implementation of the additional measures for victims of the National Socialist era set forth in Annex A. This Annex reflects key elements of the General Settlement Fund ("GSF") (providing for a Claims Committee and an Arbitration Panel) and the additional measures for victims of National Socialism that form the basis for the Exchange of Notes between the United States and Austria.

1. Immediate Compensation for Survivors: The Austrian Government will make a US \$150 million contribution to the National Fund, which will be distributed in its entirety on an expedited basis to all Holocaust survivors originating from or living in Austria as defined in the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism which will include a hardship clause. This amount will cover 1) apartment and small business leases; 2) household property; 3) personal valuables and effects. This amount will not cover potential claims against Dorotheum (which will be covered by the GSF, see *infra* para. 2) or *in rem* claims for works of art. This amount will be credited against the final cap for the GSF.

The amount of US \$150 million will be allocated to the Austrian National Fund according to the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism and the Committee Report thereto. Payments to survivors will begin immediately after entry into force of the Federal Law. Austria will provide such funding as may be required to enable the Austrian National Fund effectively to process applications for and distribute these funds to all approved applicants.

2. Establishment of a General Settlement Fund: The Austrian Federal Government will propose the necessary legislation<sup>1</sup> to the National Council by April 30, 2001 to establish a GSF. Austria will undertake its best efforts to ensure that this legislation is passed by June 30, 2001. The legislation will enter into force once all contributions have been made available. The GSF will be a voluntary fund that will provide *ex gratia* payments to certain applicants. The GSF will include both a "claims-based" and an "equity-based" component. The GSF will be capped at US \$210 million plus interest, at the Euribor rate, accruing to it beginning 30 days after all claims, pending as of June 30, 2001, against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II are dismissed with prejudice, and such interest shall continue to accrue on the funds available at any given time until the GSF has paid all approved claims. The US \$210 million contribution by Austria and Austrian companies (including the Austrian insurance industry)+ interest, under

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<sup>1</sup> The term legislation as used in this Annex refers to Federal Laws to be passed by the Austrian National Council, the legislative history including all explanatory notes, and any bylaws to be adopted and governing the operation of any bodies established under such Federal Laws.

the terms described *supra*, will be in addition to the US \$150 million referred to *supra* in para. 1. The distribution of payments by the GSF will be based on decisions of the independent Claims Committee.

a. The GSF legislation will establish an independent three-member Claims Committee (“Committee”) for all property/aryanization claims, and all other claims not covered by the Reconciliation Fund and the Arbitration Panel referred to *infra* in paragraph 3 that have been or may be asserted against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II, excluding *in rem* claims for works of art. The United States and Austria will each appoint one member; these two members will appoint a Chairperson. In the event that the Austrian and the United States designees are unable to agree upon and designate the Chairperson within 60 days after the entry into force of the GSF legislation, the United States and Austria will enter into consultations to name a Chairperson. The Committee will work under the auspices of the Austrian National Fund, which will provide technical and administrative support to the Committee.

b. The GSF legislation will provide that 50% of the funds allocated for distribution from the GSF will be reserved for a “claims-based” process and 50% of such funds will be reserved for an “equity-based” process. The GSF legislation will provide that the GSF will distribute the funds allocated for the “claims-based” process on a pro-rata basis and the funds allocated for the “equity-based” process on a per-household<sup>2</sup> basis.

c. The GSF legislation will require the Committee to establish simplified procedures, including simplified and expedited internal appeals for decisions made under the “claims-based” process. Such procedures will permit the attendance of observers to the „claims-based“ process under circumstances to be defined and under strict rules of confidentiality. The GSF legislation will provide that decisions made under the “equity-based” process are not appealable. The GSF legislation will provide that the Committee will review all applications using relaxed standards of proof.

d. The General Settlement Fund is intended to benefit victims of National Socialism as defined in the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism. The GSF legislation will provide that such persons (including their heirs, as defined *infra* in paragraph 2(e)) and victims’ communal organizations who/which suffered losses or damages as a result of or in connection with events having occurred on the territory of present-day Austria during the Nazi era or World War II are eligible to receive payment(s) from the GSF, provided that the criteria in *infra* paragraphs 2(f) or 2(g) are satisfied. The GSF legislation will also provide that the Committee will not have the authority to reopen cases that have been finally decided by an Austrian court or administrative body under Austrian restitution legislation or that have been settled after 1945. However, recognizing that there may have been certain gaps and deficiencies in the prior restitution legislation and further recognizing the *ex gratia*

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<sup>2</sup> Household on the present-day territory of the Republic of Austria between March 12, 1938 and May 9, 1945.

nature of the GSF, the Committee may award payments in the exceptional circumstances where the Committee unanimously determines that such decision or settlement constituted extreme injustice.

e. Definition of “heirs“: The GSF legislation will provide that heirs as defined under the Austrian General Civil Code (ABGB) are eligible for payments.

f. “Claims-Based“ Process: The GSF legislation will provide that the Committee may receive claims for payment for losses or damages as a result of or in connection with events having occurred on the territory of present-day Austria during the National Socialist era or World War II in the following categories:

- i. liquidated businesses including licenses and other business assets
- ii. real property
- iii. bank accounts, stocks, bonds, mortgages
- iv. moveable property not covered by the US \$150 million referred to in paragraph 1
- v. insurance policies (see *infra* paragraph n)

To be eligible for payment, claimant must show, under relaxed standards of proof (by submission of supporting material; if no relevant evidence is available, the claimant's eligibility can be made credible in some other way) the following:

- i. ownership of property at time of confiscation/  
aryanization/liquidation and
- ii. claim was never previously decided under prior restitution legislation or settled by agreement (if no contradictory evidence is presented, an affidavit asserting such, including plausible explanation for why claim was never decided or settled will be deemed sufficient), or that such decision or settlement constituted extreme injustice (see *supra* paragraph d) or
- iii. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become available (affidavit asserting such, including plausible reason for inaccessibility will be deemed sufficient)

The GSF legislation will provide that the Committee may award a payment of no more than US \$2 million for any approved claim.

The GSF legislation will provide that in reviewing claims, the Committee will take into account prior restitution and compensation measures, including the US \$150 million referred to in paragraph 1, measures under the German Foundation „Remembrance, Responsibility and the Future,“ or claims paid under ICHEIC claims-handling procedures, and the Bank Austria Settlement, to ensure that the claimant does not receive a payment under the “claims-based“ process for same property for which compensation was paid under prior measures.

The GSF legislation will provide that the Committee may either award claimant pro-rata amount of capped amount allocated for “claims-based process” or, where Committee determines that claimant is unable to satisfy evidentiary requirements, Committee must either reject claim or refer claim to “equity-based process” for per-household payment.

The GSF legislation will provide that if any funds remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

g. “Equity-Based” Process: The GSF legislation will provide that the Committee will make per-household, “equity-based” payments

- i. for any of the categories covered by *supra* paragraph 3(f) where claimant is not able to document specific claim(s), even under relaxed standards of proof, but panel has reason to assume that valid case of loss of property or
- ii. for any of the categories covered by *supra* paragraph 3(f) where claim was previously decided or settled under prior restitution legislation, but majority of Committee has reason to believe decision or settlement was inadequate or
- iii. where majority of Committee has reason to believe claimant was not adequately compensated for occupational or educational losses during the Nazi era on the territory of present-day Austria or
- iv. for any claims arising out of or related to the National Socialist era or World War II not covered by the Reconciliation Fund or the Arbitration Panel

The GSF legislation will provide that “equity-based” payments will be made on a per-household basis. The GSF legislation will provide that the Committee will award no more than one payment per household.

The GSF legislation will provide that applicants for “equity-based” payments must indicate on their application, to the extent possible, the address or location of the household for which they are seeking a payment, and the members of the household, including the heirs of those who have not survived, who are entitled to share the payment.

The GSF legislation will provide that “household” shall consist of survivors who lived in the “household” during this period and the heirs, as defined *supra* in paragraph e,

The GSF legislation will provide that if any funds remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

h. Submission of Claims/Payments: The GSF legislation will provide that a claimant may submit an application to the Committee either under the “claims-based” process, which may include multiple properties, or under the “equity-based”

process. If the entire claim is rejected under the „claims-based“ process claimant may submit an application under the „equity-based“ process.

i. Filing Periods: The GSF legislation will allow applications to be made to the GSF for 24 months after the entry into force of the GSF law.

j. Waivers: The GSF legislation will provide that each applicant for a GSF payment will be required to state that, upon receipt of a payment from the GSF, he or she will, for him/herself and his/her heirs, waive any and all alleged claims against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II. Such a waiver will not preclude claimant from bringing an action against Austria and/or Austrian companies for the *in rem* return of a specifically identified piece of art or an action for *in rem* restitution for property owned by Austrian provinces and municipalities in accordance with *infra* para. 10.

The GSF and Panel legislation will provide that nothing therein will be deemed to waive any right of Holocaust survivors and heirs in any prior class action settlement reached in courts in the United States.

k. Eligibility for Social Security and Other Public Benefits: The GSF legislation will make clear that receipt of payment from GSF funds will not affect the recipient's eligibility for social security or other public benefits.

l. Publicity: The GSF legislation will require that the GSF, in conjunction with the Austrian National Fund, provide appropriately extensive publicity concerning the benefits that the GSF will offer and how to apply. The Austrian National Fund will consult with the United States regarding its proposed publicity plan. In addition, the GSF legislation will authorize and encourage the Austrian National Fund to utilize existing databases of Austrian survivor populations from other sources.

m. Costs: The GSF legislation will provide that the administrative costs for the „claims-based“ and „equity-based“ processes will be covered from the budget provided for the Austrian National Fund and the GSF.

n. Insurance: The GSF legislation will reaffirm the commitment of the Austrian Federal Government to ensure that all insurance claims that come within the scope of claims-handling procedures adopted by the International Commission on Holocaust Era Insurance Claims (including those concerning valuation, standards of proof, and decisions of the Chairman) and are made against Austrian insurance companies not defined as „German companies“ within the German Foundation Law, and not otherwise covered under ICHEIC, will be solely decided by the Committee and distributed by the GSF on the basis of such procedures. The Austrian Insurance Association will make the lists of Holocaust era policy holders publicly accessible, to the extent available.

The GSF legislation will provide that when an insurance claim is approved for payment, the Committee will promptly notify the Austrian National Fund. The Austrian National Fund will authorize the payment of that claim from the GSF funds

(at a capped amount of US \$ 25 million within the GSF, which amount includes interest on US \$ 210 million) allocated for such payments out of the GSF.

In the event that the amount allocated for insurance claims under this paragraph is exhausted, and the Claims Committee certifies, in consultation with representatives of the plaintiffs' attorneys recommended by the United States, an amount of up to US \$ 5 million from the amount allocated to the „claims-based“ process, as set forth *supra* in para. 2 (b), may be used to pay insurance claims under this paragraph. All funds used to pay approved insurance claims will be distributed on a pro rata basis.

The GSF legislation will provide that if any funds allocated for insurance remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

3. Arbitration Panel for *In Rem* Restitution of Publicly Owned Property:

a. Austria will seek to provide, in accordance with the procedures described below, on a case by case basis, *in rem* restitution of publicly-owned property. Particular attention will be given to the issue of property formerly owned by Jewish communal organizations, taking into account the particular situation of the Austrian Jewish Community.

b. In connection with the establishment of the GSF, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001 to establish, fund, and authorize a three-member Arbitration Panel ("Panel") to address the *in rem* return of publicly-owned property, including property formerly owned by Jewish communal organizations. Austria will undertake its best efforts to ensure that this legislation is passed by June 30, 2001.

c. The implementation of *in rem* restitution of publicly-owned property will have to be in conformity with Austrian constitutional law and Austria's international obligations.

d. The Panel legislation will provide that the United States, with prior consultation with the Conference on Jewish Material Claims, the Austrian Jewish Community, and attorneys for the victims, and Austria will each appoint one member; these two members will appoint a Chairperson. All members of the three-person panel should be familiar with the relevant regulations both under Austrian and international law (in particular, the European Convention on the Protection of Fundamental Freedoms and Human Rights). In the event that the Austrian and the United States designees are unable to agree upon and designate the Chairperson within 60 days after the entry into force of the Panel legislation, the United States and Austria will enter in to consultations to name a Chairperson. The Panel legislation will provide for an expert to serve as a liaison between the Panel and the Austrian Historical Commission.

e. The Panel legislation will provide that the Panel will consider, on a case by

case basis, claims for the *in rem* restitution of publicly-owned property.

f. The Panel legislation will provide that the Panel will not have the authority to reopen or reconsider cases that were previously decided under prior restitution legislation, or settled by agreement, or where claimant or relative has otherwise received compensation or other consideration for the property in question, except in the limited circumstances described *infra* in paragraph 3(g).

g. For the purposes of restitution *in rem*, the notion of “publicly-owned property” covers exclusively real estate/ immovable property/buildings which:

- i. between March 12, 1938 and May 9, 1945 was taken from the previous owners, whether without authorization or on the basis of laws or other orders, on racial, national, or, alternatively, other grounds in connection with the assumption of power by National Socialism; and
- ii. was never subject of a claim that was previously decided by an Austrian court or administrative body under prior restitution legislation or a settlement by agreement, or where claimant or relative has never otherwise received compensation or other consideration for the property in question, except in exceptional circumstances where the Panel unanimously determines that prior settlement constituted an extreme injustice; and
- iii. on January 17, 2001, was exclusively and directly, owned by the Federation (“Bund”) or any legal person, agency, or subsidiary wholly-owned, directly or indirectly, by the Federation

h. The Panel legislation will provide that the Panel will make recommendations on the basis of evidence submitted by the claimant and submissions of the Austrian Federal Government, as well as any relevant findings of the Austrian Historical Commission. A representative of the Austrian Federal Government will ask the Austrian Historical Commission, as a matter of high priority, to examine, identify and report to the Panel such information as it may obtain concerning property and other assets that may be the subject of *in rem* restitution.

i. The Panel legislation will provide that the Panel will make recommendations to the competent Austrian Federal Minister for *in rem* restitution. The Panel legislation will provide that where *in rem* restitution, although merited, is not practical or feasible, the Panel may make recommendations that the claimant be awarded a comparable property to be recommended by the Panel, in consultation with the competent Austrian Federal Minister. The Panel legislation will provide that such recommendations will be made publicly available (*e.g.*, on the internet).

j. The Austrian Parliament will pass a resolution indicating its expectation that the recommendations will be expected to be approved by the competent Austrian Minister(s). The Austrian Federal Government will support such a resolution.

k. The Panel legislation will provide that the Panel will make its determinations within six (6) months of receiving any claim.

l. The Panel legislation will provide that the Panel will establish its own rules of procedure.

m. The Panel legislation will provide that individual claimants (former owners or their heirs, as defined *supra* in paragraph 2(e)) are eligible to receive *in rem* restitution (or another appropriate remedy referred to *supra* in paragraph 3(h)) provided that the following criteria are satisfied:

- i. property is currently publicly-owned as defined *supra* in paragraph 3(g); and
- ii. proof of ownership of property at time of loss; and
- iii. claim was never previously decided or settled under prior restitution legislation or claimants or relative has never otherwise received compensation or other consideration for the property in question except in the exceptional circumstances where the Panel unanimously determines that prior settlement constituted extreme injustice; or
- iv. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become accessible

n. The Panel legislation will provide that Jewish communal organizations, including the Israelitische Kultusgemeinde ("IKG"), are eligible to receive restitution *in rem* (or another appropriate remedy referred to *supra* in paragraph 3(i)) for losses of immovable and tangible moveable property (e.g. cultural or religious items) provided that the following criteria are satisfied:

- i. property is currently publicly-owned as defined *supra* in paragraph 3(g)(i)-(iii); and
- ii. property was owned, at the time of loss, by the Jewish communal organization or in case of defunct Jewish communal organization, its legal predecessor; and
- iii. claim was never previously decided or settled under prior restitution legislation or claimants or relative has never otherwise received compensation or other consideration for the property in question except in the exceptional circumstances where the Panel unanimously determines that prior settlement constituted extreme injustice; or
- iv. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become accessible.

o. The Panel legislation will allow applications to be made to the Panel for 24 months after the enactment of the Panel legislation or until one year after the date the Austrian Historical Commission issues its final report, whichever date is later.

p. The Austrian Federal Government will undertake its best efforts to identify publicly owned property as defined supra in paragraph 3(g).

q. The Austrian Federal Government will undertake its best efforts to ensure the adoption of similar procedures and processes at the provincial and municipal levels and to secure such restitution at said levels.

r. The *in rem* return of works of art will be excepted from the scope of the Panel legislation.

s. The Government of the United States and the Government of Austria will consult on a regular basis concerning the implementation of the Panel recommendations.

#### 4. Additional Social Benefits to Survivors:

a. Austria will pass the necessary legislation to allow disbursement of “Pflegegeld” of categories up to 7 to victims of National Socialism living abroad as soon as possible.

b. Austria will, as soon as possible, make the following changes in the laws that address social benefits for victims of National Socialism:

- i. amend the Victims Assistance Act so as to abolish the six years’ age limit provided for in §1(2) *lit f* of the Victims Assistance Act;
- ii. amend paragraph 11 of the Victims Assistance Act to allow for pensions for persons who were Austrian citizens as of March 13, 1938, or who had during the period of 10 years prior to that date their residence on the territory of the Republic of Austria and were not Austrian citizens if they fulfill the other requirements of the Victims Assistance Act.
- iii. amend the definition of “imprisonment” in §1(1) of the Victims Assistance Act to include those who were confined in concentration camp-like facilities, *e.g.*, *Sammellager* (“Collection Camps);
- iv. amend § 502(6) of the General Pension Law (ASVG) to the effect that all those born on the present-day territory of the Republic of Austria between January 1, 1933 and March 12, 1938 will be eligible to buy into the Austrian pension system under the conditions of § 502(1,4,6).

5. Restitution of Works of Art: Art restitution will proceed on an expedited basis pursuant to the Federal Law of December 4, 1998 concerning the works of art from Austrian Federal Museums and Collections. The Austrian Federal Government will undertake its best efforts to address the issue of the return of works of art from Austrian companies and Austrian public entities not covered by the Federal Law. The Austrian Federal Government will undertake its best efforts to encourage the adoption of similar procedures at the municipal and provincial levels. To this end, the Austrian Federal Chancellor will write a letter to governors and mayors urging

them to adopt such measures, recalling the resolution by the Austrian Parliament of 1998 urging provincial and municipal museums to research the provenance of the art works in their possession and to return all such art looted during the National Socialist era to the rightful owners.

6. Hakoah Sports Club: The former Hakoah sports field was a leasehold property of the Hakoah Sport Club located in the Prater in Vienna. The City of Vienna is prepared to offer to lease to the IKG, on a reasonable and mutually acceptable long-term basis similar to that of the original lease, a similar piece of land in the vicinity of the former location. A contribution of US \$8 million will be made available for the construction of an appropriate sports facility. This will be the final amount for this purpose.

7. State Archives: Austria will provide additional resources to the Austrian State Archives to allow better access to the files. Austria will do its utmost to ensure that requests to the Austrian State Archives for information are handled in an expedited and non-bureaucratic manner.

8. Jewish Cemeteries: Austria will provide additional support for the restoration and maintenance of Jewish cemeteries, known or unknown, in Austria.

9. Subsidies to the Annual Holocaust Education Program at the Salzburg Seminar: Austria will contribute to such a program.

10. Legal Closure: The establishment of the GSF in conformity with the principles set forth in *supra* paragraphs 2 and 3, the passage of the legislation necessary to provide victims of National Socialism with the additional benefits referred to *supra* in paragraph 4, and the good faith progress in the implementation of the commitments referred to *supra* in paragraphs 5 to 9, confirmed by a diplomatic note from Austria to the United States, will lead to the dismissal with prejudice of all claims arising out of or related to the National Socialist era or World War II that have been or may be asserted against Austria and/or Austrian companies, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art, by the plaintiffs' attorneys who have signed the Joint Statement and to the United States taking appropriate steps in accordance with Articles 2(2), 2(3) and 3(3) of the Agreement between the Government of the United States of America and the Austrian Federal Government concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund) to assist Austria and Austrian companies in achieving legal closure for all such claims. The term „works of art“ is understood to include tangible movable cultural or religious objects.

Austrian provinces and municipalities will not benefit from legal closure, as set forth in Article 3(3) of the Agreement, in relation to claims for *in rem* restitution of publicly-owned property, applying *mutatis mutandis*, the principles set forth in *supra* para. 3(g), unless or until the Austrian Federal Government notifies the Government of the United States that such province or municipality has adopted similar procedures for *in rem* restitution of publicly-owned property or agrees to accept recommendations of the Arbitral Panel established *supra* in paragraph 3.

## Annex B

### Definition of "Austrian Companies"

„Austrian companies“ as used in this Joint Statement and the Annexes thereto are defined as follows:

1. Enterprises that, at any given time, had or have their headquarters within the borders of the present-day Republic of Austria as well as their parent companies (past or present, direct or indirect), even when the latter had or have their headquarters abroad.
2. Enterprises situated outside the borders of the present-day Republic of Austria in which Austrian enterprises as described in Sentence (1), at any given time, had or have a direct or indirect financial participation of at least 25 percent.
3.
  - a. An „enterprise“ or „company,, means any entity, whether organized under public or private law as a corporation, partnership, sole proprietorship, association of business entities, society, community, cooperative, non-profit organization or otherwise as well as any municipality, private or other public law entity. Any enterprise (in the above meaning) incorporated or otherwise organized under Austrian law shall be deemed for all purposes of this definition to have its headquarters in Austria. An enterprise (in the above meaning) includes its successors, predecessors, former parents, assigns, officers, directors, employees, agents attorneys, heirs, executors, administrators, personal representatives, and current or former shareholders. Any branch office, place of business, establishment or place of work of a non-Austrian company or enterprise (in the above meaning) located within the borders of the present-day Republic of Austria shall be deemed to be a company or enterprise (in the above meaning) that had or has its headquarters in Austria, and any such non-Austrian company or enterprise (in the above meaning) shall be deemed to be a parent or former parent as the case may be, with respect to actions or inactions of such branch or place of business.
  - b. A „parent company“ means any company that owns or owned a direct or indirect participation of at least 25 percent in any enterprise that had or has its headquarters in the present-day Republic of Austria.

The definition of „Austrian companies“ does not include foreign parent companies with headquarters outside the present-day territory of the Republic of Austria in which the sole alleged claim arising from National Socialist injustice or World War II has no connection with the Austrian affiliate and the latter's involvement in National Socialist injustice, unless there is a pending discovery request by plaintiff(s), of which the United States is provided by the defendant with copy to plaintiff(s), seeking discovery from or concerning National Socialist or World War II actions of the Austrian affiliate.

The definitions in the Exchange of Notes and the Joint Statement are meant to be identical (as are the words „company“ and „enterprise“) and should be interpreted in an identical manner.

No. 14

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The United States welcomes the commitment of the Austrian Federal Government to provide immediate compensation for survivors pursuant to Annex A, paragraph 1, to propose legislation to the Austrian Parliament by April 30, 2001 to establish a General Settlement Fund ("GSF") (providing for a Claims Committee and an Arbitration Panel) in conformity with the principles set forth in Annex A, paragraphs 2 and 3, and to seek changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4.

The United States further welcomes the commitment of the Austrian Federal Government to make good faith progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9.

The United States considers the provision of immediate compensation for survivors pursuant to Annex A, paragraph 1, the General Settlement Fund, established in conformity with the principles set forth in Annex A, paragraphs 2 and 3, the changes in the laws that address social benefits for victims of National Socialism in conformity with Annex A, paragraph 4, and the making of good faith

progress on the implementation of the additional measures for victims of National Socialism set forth in Annex A, paragraphs 5-9, to constitute a "suitable potential remedy," as understood by Articles 2(2) and 3(3) of the Agreement, for all claims that have been or may be asserted against Austria and/or Austrian companies, as defined in Annex B, arising out of or related to the National Socialist era or World War II, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art and, subject to the provisions of Annex A, paragraph 10, claims for *in rem* restitution of property owned by Austrian provinces and municipalities.

Upon fulfillment of the commitments of the Austrian Federal Government referred to above, the United States will support all-embracing and enduring legal peace for the above-mentioned claims, as provided for in the Agreement and herein.

The United States agrees that this Exchange of Notes and the establishment of the GSF shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era or World War II.

Austria's Note and this affirmative reply shall constitute an Agreement between the United States and Austria, which shall enter into force when Austria notifies the United States, by diplomatic note, that it has implemented its commitments referred to above.

The United States agrees that Annexes A and B shall be integral parts of this Agreement.

The Embassy of the United States of America takes this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Austria the assurances of its highest consideration.

Attachment: As stated



Embassy of the United States of America,

Vienna, January 23, 2001.

## Annex A

The Exchange of Notes between the Government of the United States and the Austrian Federal Government provides that the principles governing the operation of the General Settlement Fund will be set forth in Annex A. The Exchange of Notes also provides that Austria will make good faith progress on the implementation of the additional measures for victims of the National Socialist era set forth in Annex A. This Annex reflects key elements of the General Settlement Fund ("GSF") (providing for a Claims Committee and an Arbitration Panel) and the additional measures for victims of National Socialism that form the basis for the Exchange of Notes between the United States and Austria.

1. Immediate Compensation for Survivors: The Austrian Government will make a US \$150 million contribution to the National Fund, which will be distributed in its entirety on an expedited basis to all Holocaust survivors originating from or living in Austria as defined in the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism which will include a hardship clause. This amount will cover 1) apartment and small business leases; 2) household property; 3) personal valuables and effects. This amount will not cover potential claims against Dorotheum (which will be covered by the GSF, see *infra* para. 2) or *in rem* claims for works of art. This amount will be credited against the final cap for the GSF.

The amount of US \$150 million will be allocated to the Austrian National Fund according to the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism and the Committee Report thereto. Payments to survivors will begin immediately after entry into force of the Federal Law. Austria will provide such funding as may be required to enable the Austrian National Fund effectively to process applications for and distribute these funds to all approved applicants.

2. Establishment of a General Settlement Fund: The Austrian Federal Government will propose the necessary legislation<sup>1</sup> to the National Council by April 30, 2001 to establish a GSF. Austria will undertake its best efforts to ensure that this legislation is passed by June 30, 2001. The legislation will enter into force once all contributions have been made available. The GSF will be a voluntary fund that will provide *ex gratia* payments to certain applicants. The GSF will include both a "claims-based" and an "equity-based" component. The GSF will be capped at US \$210 million plus interest, at the Euribor rate, accruing to it beginning 30 days after all claims, pending as of June 30, 2001, against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II are dismissed with prejudice, and such interest shall continue to accrue on the funds available at any given time until the GSF has paid all approved claims. The US \$210 million contribution by Austria and Austrian companies (including the Austrian insurance industry)+ interest, under the terms described *supra*, will be in addition to the US \$150 million referred to *supra*

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<sup>1</sup> The term legislation as used in this Annex refers to Federal Laws to be passed by the Austrian National Council, the legislative history including all explanatory notes, and any bylaws to be adopted and governing the operation of any bodies established under such Federal Laws.

in para. 1. The distribution of payments by the GSF will be based on decisions of the independent Claims Committee.

a. The GSF legislation will establish an independent three-member Claims Committee ("Committee") for all property/aryanization claims, and all other claims not covered by the Reconciliation Fund and the Arbitration Panel referred to *infra* in paragraph 3 that have been or may be asserted against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II, excluding *in rem* claims for works of art. The United States and Austria will each appoint one member; these two members will appoint a Chairperson. In the event that the Austrian and the United States designees are unable to agree upon and designate the Chairperson within 60 days after the entry into force of the GSF legislation, the United States and Austria will enter into consultations to name a Chairperson. The Committee will work under the auspices of the Austrian National Fund, which will provide technical and administrative support to the Committee.

b. The GSF legislation will provide that 50% of the funds allocated for distribution from the GSF will be reserved for a "claims-based" process and 50% of such funds will be reserved for an "equity-based" process. The GSF legislation will provide that the GSF will distribute the funds allocated for the "claims-based" process on a pro-rata basis and the funds allocated for the "equity-based" process on a per-household<sup>2</sup> basis.

c. The GSF legislation will require the Committee to establish simplified procedures, including simplified and expedited internal appeals for decisions made under the "claims-based" process. Such procedures will permit the attendance of observers to the "claims-based" process under circumstances to be defined and under strict rules of confidentiality. The GSF legislation will provide that decisions made under the "equity-based" process are not appealable. The GSF legislation will provide that the Committee will review all applications using relaxed standards of proof.

d. The General Settlement Fund is intended to benefit victims of National Socialism as defined in the Federal Law amending the Federal Law to Establish the National Fund of the Republic of Austria for Victims of National Socialism. The GSF legislation will provide that such persons (including their heirs, as defined *infra* in paragraph 2(e)) and victims' communal organizations who/which suffered losses or damages as a result of or in connection with events having occurred on the territory of present-day Austria during the Nazi era or World War II are eligible to receive payment(s) from the GSF, provided that the criteria in *infra* paragraphs 2(f) or 2(g) are satisfied. The GSF legislation will also provide that the Committee will not have the authority to reopen cases that have been finally decided by an Austrian court or administrative body under Austrian restitution legislation or that have been settled after 1945. However, recognizing that there may have been certain gaps and deficiencies in the prior restitution legislation and further recognizing the *ex gratia* nature of the GSF, the Committee may award payments in the exceptional circumstances where the Committee unanimously determines that such decision or settlement constituted extreme injustice.

<sup>2</sup> Household on the present-day territory of the Republic of Austria between March 12, 1938 and May 9, 1945.

e. Definition of "heirs": The GSF legislation will provide that heirs as defined under the Austrian General Civil Code (ABGB) are eligible for payments.

f. "Claims-Based" Process: The GSF legislation will provide that the Committee may receive claims for payment for losses or damages as a result of or in connection with events having occurred on the territory of present-day Austria during the National Socialist era or World War II in the following categories:

- i. liquidated businesses including licenses and other business assets
- ii. real property
- iii. bank accounts, stocks, bonds, mortgages
- iv. moveable property not covered by the US \$150 million referred to in paragraph 1
- v. insurance policies (see *infra* paragraph n)

To be eligible for payment, claimant must show, under relaxed standards of proof (by submission of supporting material; if no relevant evidence is available, the claimant's eligibility can be made credible in some other way) the following:

- i. ownership of property at time of confiscation/aryanization/liquidation and
- ii. claim was never previously decided under prior restitution legislation or settled by agreement (if no contradictory evidence is presented, an affidavit asserting such, including plausible explanation for why claim was never decided or settled will be deemed sufficient), or that such decision or settlement constituted extreme injustice (see *supra* paragraph d) or
- iii. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become available (affidavit asserting such, including plausible reason for inaccessibility will be deemed sufficient)

The GSF legislation will provide that the Committee may award a payment of no more than US \$2 million for any approved claim.

The GSF legislation will provide that in reviewing claims, the Committee will take into account prior restitution and compensation measures, including the US \$150 million referred to in paragraph 1, measures under the German Foundation "Remembrance, Responsibility and the Future," or claims paid under ICHEIC claims-handling procedures, and the Bank Austria Settlement, to ensure that the claimant does not receive a payment under the "claims-based" process for same property for which compensation was paid under prior measures.

The GSF legislation will provide that the Committee may either award claimant pro-rata amount of capped amount allocated for "claims-based process" or, where Committee determines that claimant is unable to satisfy evidentiary requirements, Committee must either reject claim or refer claim to "equity-based process" for per-

household payment.

The GSF legislation will provide that if any funds remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

g. "Equity-Based" Process: The GSF legislation will provide that the Committee will make per-household, "equity-based" payments

- i. for any of the categories covered by *supra* paragraph 3(f) where claimant is not able to document specific claim(s), even under relaxed standards of proof, but panel has reason to assume that valid case of loss of property or
- ii. for any of the categories covered by *supra* paragraph 3(f) where claim was previously decided or settled under prior restitution legislation, but majority of Committee has reason to believe decision or settlement was inadequate or
- iii. where majority of Committee has reason to believe claimant was not adequately compensated for occupational or educational losses during the Nazi era on the territory of present-day Austria or
- iv. for any claims arising out of or related to the National Socialist era or World War II not covered by the Reconciliation Fund or the Arbitration Panel

The GSF legislation will provide that "equity-based" payments will be made on a per-household basis. The GSF legislation will provide that the Committee will award no more than one payment per household.

The GSF legislation will provide that applicants for "equity-based" payments must indicate on their application, to the extent possible, the address or location of the household for which they are seeking a payment, and the members of the household, including the heirs of those who have not survived, who are entitled to share the payment.

The GSF legislation will provide that "household" shall consist of survivors who lived in the "household" during this period and the heirs, as defined *supra* in paragraph e,

The GSF legislation will provide that if any funds remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

h. Submission of Claims/Payments: The GSF legislation will provide that a claimant may submit an application to the Committee either under the "claims-based" process, which may include multiple properties, or under the "equity-based" process. If the entire claim is rejected under the "claims-based" process claimant may submit an application under the "equity-based" process.

i. Filing Periods: The GSF legislation will allow applications to be made to the GSF for 24 months after the entry into force of the GSF law.

j. Waivers: The GSF legislation will provide that each applicant for a GSF payment will be required to state that, upon receipt of a payment from the GSF, he or she will, for him/herself and his/her heirs, waive any and all alleged claims against Austria and/or Austrian companies arising out of or related to the National Socialist era or World War II. Such a waiver will not preclude claimant from bringing an action against Austria and/or Austrian companies for the *in rem* return of a specifically identified piece of art or an action for *in rem* restitution for property owned by Austrian provinces and municipalities in accordance with *infra* para. 10.

The GSF and Panel legislation will provide that nothing therein will be deemed to waive any right of Holocaust survivors and heirs in any prior class action settlement reached in courts in the United States.

k. Eligibility for Social Security and Other Public Benefits: The GSF legislation will make clear that receipt of payment from GSF funds will not affect the recipient's eligibility for social security or other public benefits.

l. Publicity: The GSF legislation will require that the GSF, in conjunction with the Austrian National Fund, provide appropriately extensive publicity concerning the benefits that the GSF will offer and how to apply. The Austrian National Fund will consult with the United States regarding its proposed publicity plan. In addition, the GSF legislation will authorize and encourage the Austrian National Fund to utilize existing databases of Austrian survivor populations from other sources.

m. Costs: The GSF legislation will provide that the administrative costs for the "claims-based" and "equity-based" processes will be covered from the budget provided for the Austrian National Fund and the GSF.

n. Insurance: The GSF legislation will reaffirm the commitment of the Austrian Federal Government to ensure that all insurance claims that come within the scope of claims-handling procedures adopted by the International Commission on Holocaust Era Insurance Claims (including those concerning valuation, standards of proof, and decisions of the Chairman) and are made against Austrian insurance companies not defined as "German companies" within the German Foundation Law, and not otherwise covered under ICHEIC, will be solely decided by the Committee and distributed by the GSF on the basis of such procedures. The Austrian Insurance Association will make the lists of Holocaust era policy holders publicly accessible, to the extent available.

The GSF legislation will provide that when an insurance claim is approved for payment, the Committee will promptly notify the Austrian National Fund. The Austrian National Fund will authorize the payment of that claim from the GSF funds (at a capped amount of US \$ 25 million within the GSF, which amount includes interest on US \$ 210 million) allocated for such payments out of the GSF.

In the event that the amount allocated for insurance claims under this paragraph is exhausted, and the Claims Committee certifies, in consultation with representatives of the plaintiffs' attorneys

recommended by the United States, an amount of up to US \$ 5 million from the amount allocated to the "claims-based" process, as set forth *supra* in para. 2 (b), may be used to pay insurance claims under this paragraph. All funds used to pay approved insurance claims will be distributed on a pro rata basis.

The GSF legislation will provide that if any funds allocated for insurance remain after all approved claims have been paid, such excess funds will be transferred to the Austrian National Fund to be used for programs to benefit victims of the Holocaust, including Roma.

3. Arbitration Panel for *In Rem* Restitution of Publicly Owned Property:

a. Austria will seek to provide, in accordance with the procedures described below, on a case by case basis, *in rem* restitution of publicly-owned property. Particular attention will be given to the issue of property formerly owned by Jewish communal organizations, taking into account the particular situation of the Austrian Jewish Community.

b. In connection with the establishment of the GSF, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001 to establish, fund, and authorize a three-member Arbitration Panel ("Panel") to address the *in rem* return of publicly-owned property, including property formerly owned by Jewish communal organizations. Austria will undertake its best efforts to ensure that this legislation is passed by June 30, 2001.

c. The implementation of *in rem* restitution of publicly-owned property will have to be in conformity with Austrian constitutional law and Austria's international obligations.

d. The Panel legislation will provide that the United States, with prior consultation with the Conference on Jewish Material Claims, the Austrian Jewish Community, and attorneys for the victims, and Austria will each appoint one member; these two members will appoint a Chairperson. All members of the three-person panel should be familiar with the relevant regulations both under Austrian and international law (in particular, the European Convention on the Protection of Fundamental Freedoms and Human Rights). In the event that the Austrian and the United States designees are unable to agree upon and designate the Chairperson within 60 days after the entry into force of the Panel legislation, the United States and Austria will enter in to consultations to name a Chairperson. The Panel legislation will provide for an expert to serve as a liaison between the Panel and the Austrian Historical Commission.

e. The Panel legislation will provide that the Panel will consider, on a case by case basis, claims for the *in rem* restitution of publicly-owned property.

f. The Panel legislation will provide that the Panel will not have the authority to reopen or reconsider cases that were previously decided under prior restitution legislation, or settled by agreement, or where claimant or relative has otherwise received compensation or other consideration for the property in question,

except in the limited circumstances described *infra* in paragraph 3(g).

g. For the purposes of restitution *in rem*, the notion of "publicly-owned property" covers exclusively real estate/ immovable property/buildings which:

- i. between March 12, 1938 and May 9, 1945 was taken from the previous owners, whether without authorization or on the basis of laws or other orders, on racial, national, or, alternatively, other grounds in connection with the assumption of power by National Socialism; and
- ii. was never subject of a claim that was previously decided by an Austrian court or administrative body under prior restitution legislation or a settlement by agreement, or where claimant or relative has never otherwise received compensation or other consideration for the property in question, except in exceptional circumstances where the Panel unanimously determines that prior settlement constituted an extreme injustice; and
- iii. on January 17, 2001, was exclusively and directly, owned by the Federation ("Bund") or any legal person, agency, or subsidiary wholly-owned, directly or indirectly, by the Federation

h. The Panel legislation will provide that the Panel will make recommendations on the basis of evidence submitted by the claimant and submissions of the Austrian Federal Government, as well as any relevant findings of the Austrian Historical Commission. A representative of the Austrian Federal Government will ask the Austrian Historical Commission, as a matter of high priority, to examine, identify and report to the Panel such information as it may obtain concerning property and other assets that may be the subject of *in rem* restitution.

i. The Panel legislation will provide that the Panel will make recommendations to the competent Austrian Federal Minister for *in rem* restitution. The Panel legislation will provide that where *in rem* restitution, although merited, is not practical or feasible, the Panel may make recommendations that the claimant be awarded a comparable property to be recommended by the Panel, in consultation with the competent Austrian Federal Minister. The Panel legislation will provide that such recommendations will be made publicly available (e.g., on the internet).

j. The Austrian Parliament will pass a resolution indicating its expectation that the recommendations will be expected to be approved by the competent Austrian Minister(s). The Austrian Federal Government will support such a resolution.

k. The Panel legislation will provide that the Panel will make its determinations within six (6) months of receiving any claim.

l. The Panel legislation will provide that the Panel will establish its own rules of procedure.

m. The Panel legislation will provide that individual claimants (former owners or their heirs, as defined *supra* in paragraph 2(e)) are eligible to receive *in rem* restitution (or another appropriate remedy referred to *supra* in paragraph 3(h)) provided that the following criteria are satisfied:

- i. property is currently publicly-owned as defined *supra* in paragraph 3(g); and
- ii. proof of ownership of property at time of loss; and
- iii. claim was never previously decided or settled under prior restitution legislation or claimants or relative has never otherwise received compensation or other consideration for the property in question except in the exceptional circumstances where the Panel unanimously determines that prior settlement constituted extreme injustice; or
- iv. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become accessible

n. The Panel legislation will provide that Jewish communal organizations, including the Israelitische Kultusgemeinde ("IKG"), are eligible to receive restitution *in rem* (or another appropriate remedy referred to *supra* in paragraph 3(i)) for losses of immovable and tangible moveable property (e.g. cultural or religious items) provided that the following criteria are satisfied:

- i. property is currently publicly-owned as defined *supra* in paragraph 3(g) (i)-(iii); and
- ii. property was owned, at the time of loss, by the Jewish communal organization or in case of defunct Jewish communal organization, its legal predecessor; and
- iii. claim was never previously decided or settled under prior restitution legislation or claimants or relative has never otherwise received compensation or other consideration for the property in question except in the exceptional circumstances where the Panel unanimously determines that prior settlement constituted extreme injustice; or
- iv. claim was denied under prior legislation because of failure to produce required evidence, where such evidence was inaccessible to claimant but has since become accessible.

o. The Panel legislation will allow applications to be made to the Panel for 24 months after the enactment of the Panel legislation or until one year after the date the Austrian Historical Commission issues its final report, whichever date is later.

p. The Austrian Federal Government will undertake its best efforts to identify publicly owned property as defined *supra* in paragraph 3(g).

q. The Austrian Federal Government will undertake its best efforts to ensure the adoption of similar procedures and processes at the provincial and municipal levels and to secure such restitution at said levels.

r. The *in rem* return of works of art will be excepted from the scope of the Panel legislation.

s. The Government of the United States and the Government of Austria will consult on a regular basis concerning the implementation of the Panel recommendations.

#### 4. Additional Social Benefits to Survivors:

a. Austria will pass the necessary legislation to allow disbursement of "Pflegegeld" of categories up to 7 to victims of National Socialism living abroad as soon as possible.

b. Austria will, as soon as possible, make the following changes in the laws that address social benefits for victims of National Socialism:

- i. amend the Victims Assistance Act so as to abolish the six years' age limit provided for in §1(2) *lit f* of the Victims Assistance Act;
- ii. amend paragraph 11 of the Victims Assistance Act to allow for pensions for persons who were Austrian citizens as of March 13, 1938, or who had during the period of 10 years prior to that date their residence on the territory of the Republic of Austria and were not Austrian citizens if they fulfill the other requirements of the Victims Assistance Act.
- iii. amend the definition of "imprisonment" in §1(1) of the Victims Assistance Act to include those who were confined in concentration camp-like facilities, e.g., *Sammellager* ("Collection Camps");
- iv. amend § 502(6) of the General Pension Law (ASVG) to the effect that all those born on the present-day territory of the Republic of Austria between January 1, 1933 and March 12, 1938 will be eligible to buy into the Austrian pension system under the conditions of § 502(1,4,6).

5. Restitution of Works of Art: Art restitution will proceed on an expedited basis pursuant to the Federal Law of December 4, 1998 concerning the works of art from Austrian Federal Museums and Collections. The Austrian Federal Government will undertake its best efforts to address the issue of the return of works of art from Austrian companies and Austrian public entities not covered by the Federal Law. The Austrian Federal Government will undertake its best efforts to encourage the adoption of similar procedures at the municipal and provincial levels. To this end, the Austrian Federal Chancellor will write a letter to governors and mayors urging them to adopt such measures, recalling the resolution by the Austrian Parliament of 1998 urging provincial and municipal museums to research the provenance of the art works in their possession and to return all such art looted during the National Socialist era to the rightful owners.

6. Hakoah Sports Club: The former Hakoah sports field was a leasehold property of the Hakoah Sport Club located in the Prater in Vienna. The City of Vienna is prepared to offer to lease to the IKG, on a reasonable and mutually acceptable long-term basis similar

to that of the original lease, a similar piece of land in the vicinity of the former location. A contribution of US \$8 million will be made available for the construction of an appropriate sports facility. This will be the final amount for this purpose.

7. State Archives: Austria will provide additional resources to the Austrian State Archives to allow better access to the files. Austria will do its utmost to ensure that requests to the Austrian State Archives for information are handled in an expedited and non-bureaucratic manner.

8. Jewish Cemeteries: Austria will provide additional support for the restoration and maintenance of Jewish cemeteries, known or unknown, in Austria.

9. Subsidies to the Annual Holocaust Education Program at the Salzburg Seminar: Austria will contribute to such a program.

10. Legal Closure: The establishment of the GSF in conformity with the principles set forth in *supra* paragraphs 2 and 3, the passage of the legislation necessary to provide victims of National Socialism with the additional benefits referred to *supra* in paragraph 4, and the good faith progress in the implementation of the commitments referred to *supra* in paragraphs 5 to 9, confirmed by a diplomatic note from Austria to the United States, will lead to the dismissal with prejudice of all claims arising out of or related to the National Socialist era or World War II that have been or may be asserted against Austria and/or Austrian companies, excluding claims covered by the Reconciliation Fund, in respect of which the Agreement shall continue to govern, and further excluding *in rem* claims for works of art, by the plaintiffs' attorneys who have signed the Joint Statement and to the United States taking appropriate steps in accordance with Articles 2(2), 2(3) and 3(3) of the Agreement between the Government of the United States of America and the Austrian Federal Government concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund) to assist Austria and Austrian companies in achieving legal closure for all such claims. The term "works of art" is understood to include tangible movable cultural or religious objects.

Austrian provinces and municipalities will not benefit from legal closure, as set forth in Article 3(3) of the Agreement, in relation to claims for *in rem* restitution of publicly-owned property, applying *mutatis mutandis*, the principles set forth in *supra* para. 3(g), unless or until the Austrian Federal Government notifies the Government of the United States that such province or municipality has adopted similar procedures for *in rem* restitution of publicly-owned property or agrees to accept recommendations of the Arbitral Panel established *supra* in paragraph 3.

## Annex B

### Definition of "Austrian Companies"

"Austrian companies" as used in this Joint Statement and the Annexes thereto are defined as follows:

1. Enterprises that, at any given time, had or have their headquarters within the borders of the present-day Republic of Austria as well as their parent companies (past or present, direct or indirect), even when the latter had or have their headquarters abroad.
2. Enterprises situated outside the borders of the present-day Republic of Austria in which Austrian enterprises as described in Sentence (1), at any given time, had or have a direct or indirect financial participation of at least 25 percent.
3. a. An "enterprise" or "company" means any entity, whether organized under public or private law as a corporation, partnership, sole proprietorship, association of business entities, society, community, cooperative, non-profit organization or otherwise as well as any municipality, private or other public law entity. Any enterprise (in the above meaning) incorporated or otherwise organized under Austrian law shall be deemed for all purposes of this definition to have its headquarters in Austria. An enterprise (in the above meaning) includes its successors, predecessors, former parents, assigns, officers, directors, employees, agents attorneys, heirs, executors, administrators, personal representatives, and current or former shareholders. Any branch office, place of business, establishment or place of work of a non-Austrian company or enterprise (in the above meaning) located within the borders of the present-day Republic of Austria shall be deemed to be a company or enterprise (in the above meaning) that had or has its headquarters in Austria, and any such non-Austrian company or enterprise (in the above meaning) shall be deemed to be a parent or former parent as the case may be, with respect to actions or inactions of such branch or place of business.  
  
b. A "parent company" means any company that owns or owned a direct or indirect participation of at least 25 percent in any enterprise that had or has its headquarters in the present-day Republic of Austria.

The definition of "Austrian companies" does not include foreign parent companies with headquarters outside the present-day territory of the Republic of Austria in which the sole alleged claim arising from National Socialist injustice or World War II has no connection with the Austrian affiliate and the latter's involvement in National Socialist injustice, unless there is a pending discovery request by plaintiff(s), of which the United States is provided by the defendant with copy to plaintiff(s), seeking discovery from or

concerning National Socialist or World War II actions of the Austrian affiliate.

The definitions in the Exchange of Notes and the Joint Statement are meant to be identical (as are the words "company" and "enterprise") and should be interpreted in an identical manner.